

## REMARKS

Claims 1, 2, and 5-7 are pending in the present application. Claims 1 and 6 have been amended to no longer recite the word “unfermented.” Thus, no new matter has been added. Reconsideration and withdrawal of the present rejections in view of the comments presented herein are respectfully requested.

### **Rejection of Claims 1, 2, and 5-7 under 35 U.S.C. § 112, first paragraph**

Claims 1 and 6 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. While not acquiescing to the Examiner’s reasoning and without prejudice to further prosecution, Claims 1 and 6 are amended herein to no longer recite the objected-to language. In view of this amendment, Applicants respectfully request removal of this rejection.

### **Rejection under 35 U.S.C. § 103(a)**

Claims 1, 2, and 5-7 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zeyuan *et al.* (*J. Agric. Food Chem.* 46:3875-3878, 1998) in view of Suzuki *et al.* (*J. Agric. Food Chem.* 48:5649-5653, 2000) and Shirahata *et al.* (Animal Cell Technology: basic & applied aspects: proceedings of the Thirteenth Annual Meeting of the Japanese Association for Animal Cell Technology (JAACT), Fukuoka-Faratsu, Springer, November 16-21, 2000, Vol. 12) and in further view of Iwasaki *et al.* (US 7,014,876).

As discussed at the interview, Claims 1, 2, and 5-7 are patentable at least because Applicants have demonstrated superior unexpected properties that could not have been predicted by one having ordinary skill in the art even in view of the cited references. These results are reported both in the specification and in the Rule 132 Declaration of Mari Yamamoto, one of the inventors of the present application, that was submitted with Applicants response of January 14, 2011. The data provided in the Declaration show that Benifuuki tea (Test Beverage 1), which is one of the teas recited in present claims 1 and 6, contains a significant amount of catechins, including methylated catechins (6.8 mg/100 ml beverage), while Yabukita tea (Test Beverage 2), which is not recited in the present claims, contains catechins, but no methyl catechins. In addition, the barley beverage (Test Beverage 3), which contains no detectable levels of catechins,

whether methylated or not, was included as a control. (Declaration, paragraphs 6 and 8, and Tables 1 and 3).

When the different beverages were tested for their ability to lower blood triglyceride (BTG) levels, Test Beverage 1 exhibited an unexpectedly large level of reduction in BTG levels (Declaration, paragraph 9 and Table 4). Importantly, the average triglyceride level in the group of test subjects was significantly lowered after six weeks of consuming Test Beverage 1 (the Benifuki green tea), whereas triglyceride levels in test subjects were not significantly lowered after six weeks of consuming the Test Beverages 2 or 3 (Yabukita green tea or barley tea) (*Id.*). These results illustrate that the beverages containing methylated catechins have remarkable and unexpected effects of reducing triglyceride levels compared to beverages not containing methylated catechins. In particular, the green tea beverage obtained from a strain of tea containing significant amounts of catechins, but no methyl catechins (Yabukita green tea), performed no better in reducing BTG than the barley tea, which has no catechins at all. Thus, only the green tea beverage containing a significant level of methyl catechins had a significant effect on triglyceride levels. (Declaration, paragraph 10).

Nothing in the prior art would lead one having ordinary skill in the art to expect that methylated catechin-containing green tea would have such a superior result in lowering BTG compared to green tea lacking significant amounts of methylated catechins. These unexpected results are neither disclosed nor suggested by any of the cited references, either alone or in combination, could not have been predicted by one of ordinary skill in the art, and strongly support the nonobviousness of the present claims over the cited references. It is clear that in the absence of the inventors' own teachings, one having ordinary skill in the art would not have any reason to select the particular varieties of tea recited in the present claims out of all the many varieties of tea, or to select the recited methylated catechins at the recited levels. Such a person would not know to select the varieties of tea leaves that have high levels of methyl catechins, or that these compounds, at these levels, would have superior BTG reducing effects. It is only based on the disclosure of the present application that one of ordinary skill in the art would know to select these specific varieties of tea, i.e. those with high levels of the recited methylated catechins at the recited levels, for the unexpected result of lowering BTG levels.

In view of the comments presented above, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a).

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

Applicants submit that all claims are in condition for allowance. Should there be any questions concerning this application, the Examiner has agreed to contact the undersigned at the telephone number appearing below. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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